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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12 vs.

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14 HUNG VAN HUYNH,
15 Defendant.

Criminal Case No. 09cr1442-MMA

Related Civil Case No. 13cv2134-MMA

**ORDER DISMISSING
DEFENDANT'S MOTION TO
VACATE, SET ASIDE, OR
OTHERWISE CORRECT
CONVICTION AND SENTENCE
PURSUANT TO 28 U.S.C. § 2255**

[Doc. No. 69]

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17 On December 1, 2011, pursuant to a written plea agreement, Defendant Hung
18 Van Hyunh pleaded guilty to count four of a Superseding Indictment for distributing
19 220.8 grams of cocaine, a Schedule II controlled substance, in violation of Title 21,
20 United States Code, section 841(a)(1), and Title 18, section 2. *See* Plea Agreement,
21 Doc. No. 53. The Court sentenced Defendant on June 4, 2012 to 180 months
22 imprisonment, 3 years of supervised release, no fine, and a \$100 penalty assessment.
23 *See* Judgment, Doc. No. 64. On August 29, 2012, Defendant filed a motion to
24 vacate, set aside, or correct his conviction and sentence under Title 28, section 2255.
25 *See* Doc. No. 65. Defendant challenged his sentence on three grounds: (1) his
26 counsel was ineffective; (2) the Court breached the terms of his plea agreement in
27 violation of his due process rights; and (3) the government withheld *Brady* evidence
28 in violation of his due process rights. The Court summarily dismissed the motion.

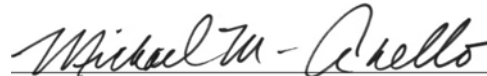
1 See Doc. No. 66. On September 6, 2013, Defendant filed a renewed challenge to his
2 conviction and sentence pursuant to 28 U.S.C. § 2255, once again alleging
3 ineffective assistance of counsel. See Doc. No. 69.

4 Defendant's motion must be dismissed pursuant to Title 28, section 2444,
5 barring successive 2255 motions. See Doc. No 4. The filing of second and
6 successive motions under section 2255 is prohibited unless the defendant has
7 obtained certification from the Court of Appeals. 28 U.S.C. § 2244; *United States v.*
8 *Allen*, 157 F.3d 661, 664 (9th Cir. 1998). Because Defendant's motion has not been
9 certified by the circuit court as required by Section 2244, this Court lacks
10 jurisdiction to entertain it, and the motion must be dismissed. See 28 U.S.C. §§
11 2255; 2244(3)(A); *Magwood v. Patterson*, 130 S. Ct. 2788, 2796 (2010); *Thompson*
12 *v. Calderon*, 151 F.3d 918, 920 (9th Cir. 1998) (en banc); see also *Woods v. Carey*,
13 525 F.3d 886, 888 (9th Cir. 2008).

14 Accordingly, the Court **DISMISSES** Defendant's motion. The Court
15 **DECLINES** to issue a Certificate of Appealability because Defendant has not made
16 a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2);
17 see *Slack v. McDaniel*, 529 U.S. 473, 483 (2000).

18 **IT IS SO ORDERED.**

19 DATED: September 12, 2013

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21 Hon. Michael M. Anello
22 United States District Judge
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